

From: [Bryant, Linda C.](#)
To: [Ordinances](#)
Cc: [County Ordinances](#)
Subject: [EXT.] -
Date: Wednesday, May 26, 2021 3:18:50 PM
Attachments: [Hernando20210526_Ordinance2021_08_Ack.pdf](#)



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

May 26, 2021

Honorable Doug Chorvat, Jr.
Hernando County Clerk's Office
20 North Main Street, Rm. 362
Brooksville, Florida 34601

Attention: Ms. Heidi Kurppe, Deputy Clerk

Dear Mr. Chorvat:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Hernando County Ordinance No. 2021-08, which was filed in this office on May 26, 2021.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

DRAFT DOCUMENT: F:\1 COUNTY ATTORNEY'S OFFICE\KJB\Legal Requests\2021-25 Nonconforming Use Abandonment Ordinance\Draft 4 Nonconforming Use Abandonment Ordinance.wpd, February 2, 2021 (11:19am) NOTE: additions/~~deletions~~ = language proposed for addition/deletion to existing Code provisions.

ORDINANCE NO.: 2021- 08

AN ORDINANCE AMENDING APPENDIX A, ARTICLE II, SECTION 2 OF THE HERNANDO COUNTY CODE OF ORDINANCES REGARDING THE DISCONTINUANCE OF NONCONFORMING USES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY:

Section 1. Modification of Appendix A, Article II, Section 2(A) of the Hernando County Code of Ordinances. Appendix A, Article II, Section 2(A) of the Hernando County Code, is hereby amended as follows:

Sec. 2 - General regulations for structures and uses.

A. Existing nonconforming structures, uses and lots:

- (1) Any building, mobile home or other structure which is lawfully existing on the effective date of this ordinance, or any amendment thereto, and which does not conform with all the provisions of the ordinance may remain in use, subject to the following regulations:

- 1 (a) Buildings and structures shall not be replaced except in conformance
2 with this ordinance and permit requirements of all other applicable
3 ordinances.
- 4 (b) Mobile homes may be replaced if the replacement unit meets the
5 requirements of this ordinance relative to minimum living area ~~and~~
6 ~~if the replacement will improve the general quality and appearance of~~
7 ~~the area. Replacement shall be made in a manner that will maximize~~
8 ~~the ability of the final installation to meet the requirements of this~~
9 ~~ordinance~~.
- 10 (c) Buildings and structures may be altered or enlarged provided that
11 such alteration or enlargement ~~will not be detrimental to adjacent~~
12 ~~properties or the neighborhood in general and provided the alteration~~
13 ~~or enlargement~~ complies with ~~the general yard requirements of the~~
14 ~~surrounding neighborhood as established by the administrative~~
15 ~~official~~ dimensional regulations of the district in which the building
16 is located at the time of expansion. ~~Alterations or enlargements shall~~
17 ~~be made in such a manner that conformance to the requirements of~~
18 ~~this ordinance is maximized~~.

1 (d) May be restored to a safe condition if declared unsafe or if damaged
2 by fire or other similar natural disaster unless the Hernando County
3 Building Official determines that such repairs cannot be made
4 without constituting replacement.

5 (2) Any use which is lawfully existing on the effective date of this ordinance, or
6 any amendment thereto, and which does not conform with all the provisions
7 of this ordinance may be continued subject to the following regulations:

8 (a) The use shall not be expanded without the approval of the Planning
9 and Zoning Commission. Approval to expand or to extend a use shall
10 not be granted if such expansion or extension will be detrimental to
11 the overall character or appearance of the general area. Expanded ~~or~~
12 ~~extended usage~~ uses shall be confined within the boundaries of that
13 parcel of land upon which ~~such usage~~ the use occupied on the
14 ~~effective~~ date the use became nonconforming of this ordinance or
15 ~~amendment thereto~~. The determination by the Planning and Zoning
16 Commission of whether the expansion of a nonconforming use is
17 detrimental to the overall character or appearance of the general area
18 includes, but is not limited to, the following factors:

- 1 (i) Whether the expansion of the nonconforming use is
2 incompatible with the surrounding land uses.
- 3 (ii) Whether the expansion of the nonconforming use
4 changes the scope, volume, intensity, or extends the
5 useful life of the nonconforming use.
- 6 (iii) Whether the expansion of the nonconforming use
7 requires a significant investment in additional
8 infrastructure to allow the use to continue.
- 9 (iv) Whether the expansion of the nonconforming use
10 constitutes a change of use, including the requirement
11 of additional types of use permits that are necessary
12 to accommodate the proposed expansion.
- 13 (v) Whether the expansion increases residential density.
- 14 (vi) Whether the expansion is contrary to the public interest.
- 15 (b) Shall not be changed to or expanded to include another
16 nonconforming use.
- 17 (c) May be changed to a conforming use.

- 1 (d) Whenever a nonconforming use has been discontinued for a period of
2 one year, no nonconforming use may be reestablished on those
3 premises.
- 4 (1) A use shall be considered discontinued once the activities and
5 commerce, essential to the continuation of the use, have
6 ceased.
- 7 (2) Proof of the discontinuation of a nonconforming use for the
8 required time period creates a rebuttable presumption of
9 intent to discontinue. The presumption does not apply when
10 a nonconforming use is discontinued involuntarily by
11 compulsion of government action.
- 12 (3) Where a nonconforming use has been deemed or presumed to
13 have been discontinued under the provisions of this Section,
14 the owner of the property or operator of the use may rebut the
15 presumption of discontinuance by establishing, by clear and
16 convincing objective evidence, that the use has continued or
17 existed beyond the date of presumed discontinuance. In all
18 cases, the party attempting to rebut the presumption of

1 discontinuance shall have the burden of establishing the
2 continuation or existence of the use beyond that date of
3 presumed discontinuance, as well as the burden of
4 establishing the existence or continued operation of the use at
5 any particular time.

6 (e) Shall be discontinued ten (10) years after reasonable notice from the
7 Administrative Official to the owner of the parcel upon which the use
8 exists that the use is nonconforming. The Governing Body may, upon
9 application by the owner of the parcel upon which the nonconforming
10 use exists and after a quasi-judicial hearing, modify the time for the
11 amortization of the nonconforming use to allow the owner of the
12 parcel upon which the nonconforming use exists to realize a return on
13 his or her investment.

14 (f) Shall be discontinued where the factual circumstances relating to the
15 use of the premises shows an intentional and voluntary act to
16 discontinue the nonconforming use on the premises.

17 (g) Notwithstanding the foregoing, the termination of a nonconforming
18 use does not require a decision by the property owner to discontinue

1 the use. A nonconforming use may be lost through negligence or
2 inadvertence. A use may also be lost if a person engages in civil or
3 criminal misconduct that the property owner knows or should know
4 could lead to involuntary closure and indeed does lead to closure.

5 (h) Changes in ownership, tenancy, or management of a nonconforming
6 use, building, or structure are permitted.

7 (3) Any lawfully existing nonconforming lot may be used as follows:

8 (a) Individually owned lots with no adjoining lots under the same
9 ownership may be used individually, provided zoning ordinance
10 regulations ~~regarding access and approved water supply and sewage~~
11 ~~disposal facilities~~ can be met.

12 (b) Multiple adjoining lots under the same ownership may be used
13 individually, provided each lot can meet sixty-six (66) percent of the
14 minimum lot width and minimum lot area regulations for the district
15 in which the lots are located and zoning ordinance regulations
16 regarding access, approved water supply and sewage disposal
17 facilities can be met.

- 1 (c) Multiple adjoining lots under the same ownership may not be used
2 individually if each lot cannot meet sixty-six (66) percent of the
3 minimum lot width and minimum lot area requirements for the
4 district in which the lots are located. If they cannot be used
5 individually, the lots must be combined in groups of whole lots so the
6 lots can meet sixty-six (66) percent of the minimum lot width and
7 minimum lot area regulations of the zoning district in which the lots
8 are located and zoning ordinance regulations regarding access,
9 approved water supply and sewage disposal facilities can be met.
- 10 (4) Any lawfully existing nonconforming communication tower shall be subject
11 to the following requirements:
- 12 (a) A nonconforming communication tower or structure may be utilized
13 for collocation.
- 14 (b) A nonconforming communication tower may not be increased in
15 height.
- 16 (c) If a nonconforming communication tower ceases to be utilized and is
17 determined by the Zoning Administrator to be abandoned, then the

1 communication tower shall be subject to the requirements of
2 Appendix A, Article II, Section 2F(9) of the Zoning Ordinance.

3 ~~(d) A communication tower which has received approval prior to June
4 23, 1998, shall have until December 31, 1998, to complete the
5 construction of the tower.~~

6 (5) In any proceeding, the party asserting that an otherwise nonconforming use,
7 structure, or lot is legally nonconforming shall bear the burden of
8 establishing, by clear and convincing objective evidence, that the standards
9 set forth in Subsection (1), (2), (3), or (4) *supra*, as applicable, has been
10 satisfied.

11 (6) The Administrative Official designated pursuant to Hernando County Code
12 Appendix A, Article V, Section 1, is hereby authorized, based upon
13 competent findings of fact, to determine and establish the nonconforming
14 status of land or structures. Any person may request that the administrative
15 official review a nonconformity for the purposes of determining that the use,
16 structure, or lot is legally nonconforming, or for the purposes of determining
17 whether a nonconforming use has been discontinued by filing a written
18 request with the administrative official. The decision of the administrative

1 official shall be deemed final unless appealed to the governing body within
2 the allowed time and as provided for in Hernando County Code Appendix A,
3 Article V, Section 3 F. The decision of the governing body may be appealed
4 to circuit court within thirty (30) days of the execution of the order to be
5 appealed by the aggrieved party filing a petition for certiorari. The
6 administrative process herein shall be the sole method of obtaining a
7 determination as to whether a legally nonconforming use exists or has been
8 discontinued.

9 **Section 2. Severability.** It is declared to be the intent of the Board of County
10 Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this
11 ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the
12 validity of the remaining portions of this ordinance.

13 **Section 3. Inclusion in the Code.** It is the intention of the Board of County Commissioners
14 of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall
15 become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the
16 sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that
17 the word "ordinance" may be changed to "section," "article," or any other appropriate designation.

